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November 6, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

01-268

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

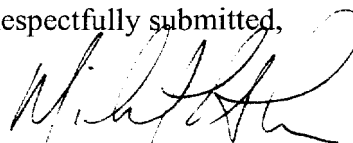
**RE: Petition of US LEC of Virginia LLC Pursuant to
Section 252(e)(5) of the Communications Act**

Dear Secretary Salas:

Pursuant to section 51.803 of the Commission's Rules and Regulations, 47 C.F.R. § 51.803, enclosed for filing with the Commission are an original and seven (7) copies of the Supplemental Submission In Further Support Of Petition of US LEC of Virginia LLC pursuant to Section 252(e)(5) of the Communications Act.

Please date stamp the extra copy of this filing and return to our messenger. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael L. Shor

cc: Service List (with attachments, by First Class Mail)
Ms. Janice Myles (with attachments, by hand)
Qualex International

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV 6 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Petition of US LEC of Virginia L.L.C.)
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Virginia State Corporation)
Commission Regarding Interconnection)
Disputes with Verizon Virginia Inc.)

CC Docket No.

01-268

**SUPPLEMENTAL SUBMISSION IN FURTHER SUPPORT OF
PETITION OF US LEC OF VIRGINIA L.L.C
PURSUANT TO SECTION 252(e)(5) OF THE COMMUNICATIONS ACT**

US LEC of Virginia L.L.C. ("US LEC"), by its undersigned counsel and in accordance with Section 252(e)(5) of the Communications Act (the "Act"), 47 U.S.C. § 252(e)(5), and section 51.803 of the FCC's rules and regulations, 47 C.F.R. § 51.803, respectfully submits the following supplemental material in further support of its petition to the FCC to preempt the jurisdiction of the Virginia State Corporation Commission ("Virginia Commission").

1. On or about September 25, 2001, US LEC filed its Petition pursuant to Section 252(e)(5) of the Act asking the FCC to preempt the jurisdiction of the Virginia Commission regarding an interconnection dispute with Verizon Virginia, Inc.

2. In its Petition US LEC stated that, in the interests of justice, it was filing the Petition in anticipation of an order from the Virginia Commission declining to exercise jurisdiction over a reciprocal compensation complaint it had filed against Verizon Virginia.

3. US LEC stated that it would notify the FCC if and when the Virginia Commission entered an order declining jurisdiction over US LEC's reciprocal compensation complaint against Verizon.

4. On or about October 24, 2001, the Virginia Commission entered a Final Order in Case No. PUC010194 (Petition of US LEC of Virginia, LLC for Declaratory Judgment Interpreting and Enforcing Interconnection Agreement with Verizon Virginia Inc.).^{1/} In the Final Order, the Virginia Commission declined to exercise jurisdiction over US LEC's reciprocal compensation complaint. Instead, Virginia Commission concluded that "the most practical action is for this Commission to decline jurisdiction and allow the parties to present their case to the FCC." (Final Order at 4).

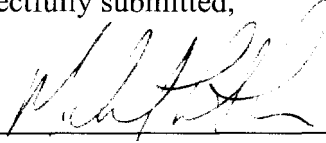
CONCLUSION

As anticipated by US LEC, the Virginia Commission has declined to exercise jurisdiction over a reciprocal compensation complaint filed against Verizon Virginia. In light of the Virginia Commission's decision, US LEC respectfully submits that it now is appropriate for the FCC to preempt the jurisdiction of the Virginia Commission regarding the interconnection dispute between US LEC and Verizon, to conduct such proceedings as it deems necessary to determine the merits of the dispute and, following such proceedings, to issue an order interpreting the reciprocal compensation provisions of the interconnection agreement between US LEC and Verizon and directing Verizon pay US LEC reciprocal compensation for the transport and termination of traffic

^{1/} A copy of the Final Order is attached hereto.

bound for ISPs, as contemplated by the agreement; and such other and further relief as the FCC may deem just and reasonable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell M. Blau", written over a horizontal line.

Russell M. Blau

Michael L. Shor

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Counsel for US LEC of Virginia L.L.C.

Dated: November 6, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2001, true and correct copies of the foregoing Supplemental Submission In Further Support Of Petition of US LEC of Virginia L.L.C. Pursuant to Section 252(e)(5) of the Communications Act, including all exhibits and attachments thereto, were served via First Class Mail, postage pre-paid Express on:

Virginia State Corporation Commission
1300 East Main Street
Richmond, Va. 23219

President - Telecom Industry Services
Verizon
1095 Avenue of the Americas
40th Floor
New York, New York 10036

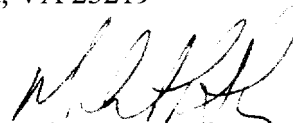
Verizon Network Services, Inc.
Attn: Jack H. White, Jr.
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Arlington, Virginia 22201

Verizon - Virginia
Attn: General Counsel
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Office of Attorney General
900 East Main Street, 2nd Floor
Richmond, VA 23219



Michael L. Shor

AT RICHMOND, OCTOBER 24, 2001

PETITION OF

US LEC OF VIRGINIA, LLC

CASE NO. PUC010194

For Declaratory Judgment
Interpreting and Enforcing
Interconnection Agreement
with Verizon Virginia Inc.

FINAL ORDER

On September 13, 2001, US LEC of Virginia, LLC ("US LEC") filed with the State Corporation Commission ("Commission") a petition for declaratory judgment against Verizon Virginia Inc. ("Verizon Virginia") seeking enforcement of a certain interconnection agreement between US LEC and Verizon Virginia (the "Agreement"), which is based upon US LEC's adoption, pursuant to Section 252(i) of the Telecommunications Act of 1996 ("the Act"), of an interconnection agreement between Verizon Virginia and MCImetro Access Transmission Services, Inc. ("MCI") (the "MCI Agreement").¹ Specifically, US LEC seeks interpretation and enforcement of the Agreement and its terms relating to the payment of reciprocal compensation for their

¹ The interconnection agreement by and between Verizon and MCImetro Access Transmission Services, Inc. was approved by this Commission in Petition of MCI Telecommunications Corporation and MCI Metro Access Transmission Services of Virginia, Inc., For arbitration of unresolved issues with Bell Atlantic-Virginia, Inc., pursuant to § 252 of the Telecommunications Act of 1996, Case No. PUC960113, 1997 S.C.C. Ann. Rep. 236.

transport and termination of Verizon Virginia's traffic to Internet Service Providers ("ISPs").

US LEC contends that Verizon Virginia will not make payments to US LEC for reciprocal compensation for the transport and termination of telephone exchange service traffic handed off by Verizon Virginia to US LEC for termination by US LEC to its exchange service end users that are ISPs or Enhanced Service Providers (collectively "ISPs"). US LEC relies upon the adopted MCIm agreement's requirement that the parties will pay such compensation for the transport and termination of "Local Traffic." Furthermore, US LEC requests that the Commission enter an order affirming an earlier Commission decision that calls to ISPs are local for purposes of reciprocal compensation.²

Finally, US LEC contends that a Commission order will not be impacted by the Federal Communications Commission's ("FCC") recent reevaluation of the treatment to be accorded to traffic delivered to ISPs.³ The FCC has stated that its determination does not "alter existing contractual obligations," and "does not

² Petition of Cox Virginia Telecom, Inc., For enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers ("Petition of Cox Virginia Telecom, Inc."), Case No. PUC970069 1997 S.C.C. Ann. Rep. 298.

³ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, 16 F.C.C.R. 9151 (2001) (the "ISP Remand Order").

preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here."⁴

In Petition of Cox Virginia Telecom, Inc.,⁵ Cox Virginia Telecom, Inc. ("Cox"), in its petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA"), presented the issue of payment of reciprocal compensation for its transport and termination of BA-VA traffic to ISPs served by Cox. We found in that case that calls to ISPs as described in the Cox petition constituted local traffic and that both Cox and BA-VA were entitled to reciprocal compensation for the termination of this type of call. We found that calls to an ISP dialed on a seven-digit basis were local in nature.

However, subsequent decisions have been issued by the FCC concerning reciprocal compensation for ISP-bound traffic⁶ and the treatment of Internet-bound traffic as interstate in nature.⁷

⁴ Id. at Para. 82.

⁵ Petition of Cox Virginia Telecom, Inc., Case No. PUC970069, 1997 S.C.C. Ann. Rep. 298.

⁶ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, CC Dockets 96-98 and 99-68, FCC 99-38, 14 F.C.C.R. 3689 (1999) (hereinafter, "Reciprocal Compensation Order").

⁷ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report & Order, FCC No. 01-131, 16 F.C.C.R. 9151 (2001) ("Order on Remand").

The Commission remains steadfast in its concern regarding the possibility of conflicting results by this Commission and the FCC.⁸ The FCC has still not reached determinations on the various outstanding issues concerning its treatment of ISP-bound traffic. Both parties in this case are seeking an expedited decision. Rather than prolong the resolution of the issues involved in this case, the most practical action is for this Commission to decline jurisdiction and allow the parties to present their case to the FCC.⁹

The Commission is a constitutional agency that derives all of its powers and authority from the Constitution of Virginia and properly enacted legislative measures. A statement by the FCC does not, per se, grant jurisdiction to this Commission. Thus, even if we could respond to the petition in a manner not

⁸ Petition of Starpower Communications, LLC, For declaratory judgment and enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc., Case No. PUC990156, 2000 S.C.C. Ann. Rep. 272; Petition of Starpower Communications, LLC, For declaratory judgment interpreting interconnection agreement with GTE South, Inc., Case No. PUC990023; and Petition of Cox Virginia Telecom, Inc. v. GTE South Incorporated, For enforcement of interconnection agreement for reciprocal compensation for the termination of local calls to Internet Service Providers, Case No. PUC990046, 2000 S.C.C. Ann. Rep. 263.

⁹ Furthermore, if interpretation of this interconnection agreement requires action under § 252(e) of the Act, the Commission would decline to waive sovereign immunity under the Eleventh Amendment of the Constitution of the United States. See Application of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, and MediaOne Telecommunications of Virginia, Inc., For arbitration of interconnection rates, terms and conditions, and related arrangements with Verizon Virginia Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. PUC000282, 2000 S.C.C. Ann. Rep. 368.

inconsistent with rules the FCC may later adopt, our ruling might be challenged on jurisdictional grounds by a party dissatisfied with the outcome.

NOW THE COMMISSION, upon full consideration of the pleadings, the Act, the Reciprocal Compensation Order, the Order on Remand, and the applicable statutes and rules, finds that we should take no action on the petition. We will dismiss the petition without prejudice and encourage the parties to request interpretation of this Agreement from the FCC.

Accordingly, IT IS THEREFORE ORDERED that the petition in Case No. PUC010194 be DISMISSED and, there being nothing further to come before the Commission, the papers transferred to the files for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Richard M. Rindler, Esquire and Michael L. Shor, Esquire, Swidler Berlin Shereff Friedman, L.L.P., 3000 K Street, NW, Washington, D.C. 20007-5116; Sumner Smith, Esquire, Senior Counsel, US LEC CORP., 6801 Morrison Boulevard, Charlotte, North Carolina 28211; Lydia R. Pulley, Vice President and General Counsel, Verizon Virginia Inc., 600 East Main Street, 11th Floor, Richmond, Virginia 23219; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Divisions of

Communications, Public Utility Accounting, and Economics and
Finance.

True Copy
Date:

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Director